

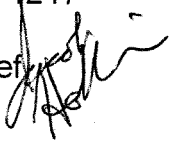
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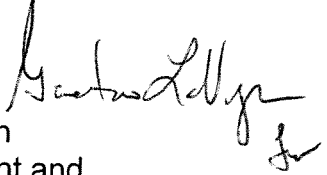
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

ENFORCEMENT CONFIDENTIAL
ATTORNEY CLIENT PRIVILEGED
PRE-DECISIONAL

DATE: MAY 16 2012

SUBJECT: Ferro Corporation
EPA Case ID No. 02-2011-1217

FROM: Jacob Hollinger, Acting Chief  and
Air Branch
Office of Regional Counsel

Ken Eng, Chief 
Air Compliance Branch
Division of Enforcement and
Compliance Assistance

TO: Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Summary

Attached for your review and signature is the final CAFO resolving EPA's Clean Air Act claims against Ferro Corporation (Ferro). Ferro has already executed the CAFO. This memorandum identifies the ways in which the final CAFO differs from the version that you approved during EPA's first round of concurrence. The differences are primarily stylistic and reflect changes that Ferro proposed and that the EPA enforcement team concluded were reasonable and appropriate. The only non-stylistic change is item (3) in the list below, and concerns the number of valves at issue in one of Ferro's violations.

The Changes

- 1) Preliminary Statement and Consent Agreement Paragraph 1: EPA agreed to mention the Complaint explicitly in the first paragraph of the Preliminary Statement, rather than delaying mention of it until Paragraph 1 of the Consent Agreement. EPA also made a conforming change to Paragraph 1.
- 2) Consent Agreement Paragraph 2: EPA agreed to say the CAFO resolves the violations alleged "in the Complaint *and this Consent Agreement*," so as to underscore that the CAFO resolves not only the violations pled in the original complaint, but also those described in Paragraph 3 of the Consent Agreement.
- 3) Consent Agreement Paragraph 3: EPA agreed that the number of valves at issue was 12, not 8. By way of background, EPA had already agreed that the settlement would cover the additional valves, but there was some confusion about the exact identify of the valves at issue. That confusion was resolved after Ferro received the original draft CAFO. Thus, the final CAFO reflects the correct number of valves.

4) Consent Agreement Paragraphs 4a and 4b: EPA agreed to stylistic changes here while preserving the fact that Ferro was admitting to the pertinent jurisdictional allegations of the Complaint and to the new allegations set forth in Paragraph 3 of the Consent Agreement.

SUE J. YAM

5) EPA Agreed to remove a paragraph in which Ferro expressly consented to the issuance of the Final Order. The enforcement team concluded that the paragraph was not necessary since Ferro has agreed not to challenge the Final Order.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

ENFORCEMENT CONFIDENTIAL
ATTORNEY CLIENT PRIVILEGED
PRE-DECISIONAL

DATE: MAY 22 2012

SUBJECT: Ferro Corporation
CAA Docket No. 02-2011-1217

FROM: Eric Schaaf
Regional Counsel
Office of Regional Counsel

and

Dore LaPesta, Director
Division of Enforcement and
Compliance Assistance

TO: Judith A. Enck
Regional Administrator

Summary

Attached please find a Consent Agreement and Final Order (CAFO) for your concurrence and execution. Execution of the Final Order will conclude a civil administrative penalty proceeding brought by EPA against Respondent Ferro Corporation (Ferro) pursuant to Section 113(d) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(d). EPA commenced the proceeding in September 2011 by filing an administrative complaint. The complaint alleges that Ferro violated several leak detection and repair (LDAR) requirements that apply to its Logan Township, New Jersey, chemical manufacturing facility (the Facility). To resolve the allegations, Ferro has agreed to pay \$171,078, more than minimum penalty figure calculated by EPA pursuant to the CAA Penalty Policy.

Background

The Facility is subject to LDAR regulations promulgated pursuant to Sections 112 and 114 of the CAA and set forth at 40 C.F.R. Part 63, Subpart FFFF, commonly known as the MON MACT, and 40 C.F.R. Part 63, Subpart H, commonly known as the HON. Both sets of regulations are designed to control emissions of hazardous air pollutants.

EPA inspected the Facility in August 2008 and conducted a follow-up inspection in March 2011. After completing those inspections, EPA determined that Ferro had violated several MON MACT and HON requirements, as well as corresponding provisions of the Facility's CAA title V operating permit.

On September 26, 2011, EPA filed a Complaint against Ferro. The complaint alleged that Ferro failed to:

- 1) Properly conduct calibration precision testing, response time tests, and use proper monitoring technique;
- 2) Identify and monitor 153 HON components;
- 3) Maintain identification on 2 valves until re-monitored within first 3 months of repair and re-monitor 1 valve within first 3 months after repair ;
- 4) Identify noncompliance with the HON in two HON periodic reports; and
- 5) Identify noncompliance in two title V Annual Compliance Certifications.

The complaint sought penalties of \$213,848, based on EPA's Clean Air Act Stationary Source Penalty Policy (the CAA Penalty Policy). However, prior to filing the complaint, the enforcement team had determined that it would be appropriate to settle the case, consistent with the CAA Penalty Policy for approximately \$150,000.

The parties met for a settlement conference on November 15, 2011. At that meeting, and in follow-up submissions, Ferro demonstrated it had failed to identify and monitor only 78 components (not 153, as alleged in the complaint), and that no environmental harm occurred as a result of its violations. Ferro also demonstrated that it is currently in full compliance with the applicable requirements. Finally, Ferro indicated that it was willing to settle the allegations on the spot for roughly \$170,000, provided that EPA agreed the settlement would also cover, in addition to single "failure to re-monitor" violation alleged in Count 3, six additional instances of the failure to re-monitor valves within the first 3 months after a repair. EPA's enforcement team accepted Ferro's offer. The agreed upon settlement-in-principle of \$171,078 is memorialized in the attached CAFO, which also amends the complaint to include the additional facts and violations disclosed by Ferro during the settlement negotiations.

Proposed Settlement

The proposed settlement of \$171,078 is fully consistent with the CAA Penalty Policy, is above the original minimum settlement amount calculated pursuant to that policy by the enforcement team and is potentially more than EPA would recover if this matter proceeded to a hearing. In addition, the settlement allows EPA to avoid the time and burden associated with proceeding to a hearing.

The settlement amount is less than the \$213,848 pled in the complaint, for the following reasons: (1) Ferro promptly corrected the violations after being made aware of them by EPA during the inspections; (2) Ferro was extremely cooperative not only during negotiations but also during the inspections and after the inspections promptly providing the enforcement team with all requested documentation and information; (3) although Ferro identified six additional instances of the "failure to re-monitor violation," it also demonstrated that it had 75 fewer instances of the "failure to identify and monitor violation" than originally pled; and (4) Ferro demonstrated that none of its violations resulted in any environmental harm. Based on those four reasons together, the enforcement team determined, consistent with the CAA Penalty Policy, that Ferro was entitled to reductions from the original penalty amount for cooperation and litigation risk, and agreed to a 20% overall reduction, resulting in a final settlement figure of \$171,078.

The attached CAFO consists of a Consent Agreement (that has already been executed by Ferro and by the Director of DECA, on behalf of EPA Region 2), and a Final Order that is recommended for your signature. Because this matter involves violations that began more than one year ago, EPA sought and obtained from the U.S. Department of Justice a waiver of the one-year statute of limitations on administrative penalty actions under Section 113(d) of the CAA.

Recommendation

The proposed settlement is consistent with the CAA Penalty Policy. We recommend that you concur on the Consent Agreement and execute the Final Order.

Attachment

bcc: G. Lavigna, DECA-ACB
C. Leung, DECA-ACB
R. Punwasie, DESA-MAB
J. Hollinger, ORC-AB
✓ ACB Facility File
ORC-AIR File

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

Ferro Corporation

Respondent

In a proceeding under Section 113(d)
of the Clean Air Act 42 U.S.C. § 7413(d)

**CONSENT AGREEMENT
AND
FINAL ORDER**

CAA-02-2011-1217

Preliminary Statement

This Consent Agreement and Final Order (CAFO) resolves an administrative penalty proceeding commenced on September 23, 2011 by the filing of a Complaint and Notice of Opportunity for a Hearing (Complaint) by the Complainant, the Director of the Division of Enforcement and Compliance Assistance for the United States Environmental Protection Agency (EPA) Region 2, against Respondent Ferro Corporation (Ferro or Respondent), pursuant to Section 113(d), 42 U.S.C. § 7413(d), of the Clean Air Act (CAA or Act), 42 U.S.C. § 7401 *et seq.*, and EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (CROP), 40 C.F.R. Part 22.

The Consent Agreement portion of this CAFO is entered into by Complainant and Respondent while the Final Order portion is executed by the EPA Region 2 Regional Administrator. Pursuant to EPA Region 2 Delegation of Authority 7-6-A, the Complainant, the Director of the Division of Enforcement and Compliance Assistance,

is delegated the authority, in Region 2, to issue CAA Section 113(d) administrative penalty complaints, and to agree to settlements and sign consent agreements memorializing those settlements. Pursuant to EPA Delegation of Authority 7-6-C, the Regional Administrator of EPA Region 2 is delegated the authority, in Region 2, to execute CAA Section 113(d) Final Orders, for CAA violations that occur in the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands.

Consent Agreement

General Provisions

1. The Complainant and Respondent enter into this Consent Agreement and propose the attached Final Order to resolve an administrative civil penalty proceeding that was commenced by EPA's Complaint.
2. Consistent with CROP 22.18(c), this Consent Agreement and the attached Final Order only resolve Respondent's liability for Federal civil penalties for the violations and facts alleged in the Complaint and this Consent Agreement, which includes the six amendments that are specified in Paragraph 3 below.
3. Consistent with CROP 22.18(b) and 22.14(c), this Consent Agreement amends the Complaint as follows, so as to include and address certain facts that Respondent disclosed to EPA after the Complaint was filed:
 - a. *Paragraph 163 of the Complaint is amended to provide:* "The Leak Tracking Sheet for valve #503 also verified that Respondent did not re-monitor valve #503 within 3 months after the leak repair. In addition, information provided by Respondent to EPA on November 29, 2011, indicates that there were six additional instances where Respondent did not re-monitor a valve within the first 3 months after repairing a leak from that valve. Respondent's November 29, 2011, email submission to EPA indicates that: (1) Valve 11 was

repaired on June 20, 2007, underwent second monitoring on June 20, 2007 and was re-monitored on June 17, 2008; (2) Valve 739.3 was repaired on August 15, 2008, underwent second monitoring on August 15, 2008 and was re-monitored on May 20, 2009; (3) Valve 21 was repaired on November 17, 2008, underwent second monitoring on November 20, 2008 and was re-monitored on April 7, 2009; (4) Valve 88 was repaired on April 15, 2010, underwent second monitoring on April 15, 2010 and was re-monitored on October 19, 2010; (5) Valve 249 was repaired on May 11, 2010, underwent second monitoring on May 11, 2010 and was re-monitored on October 26, 2010; and (6) Valve 79.62 was repaired on November 2, 2010, underwent second monitoring on November 2, 2010 and was re-monitored on April 19, 2011. Respondent's November 29, 2011, email submission to EPA further indicates that after the final repair, and after the re-monitoring, none of the six valves identified in that submission were leaking above the leak rate."

- b. *The heading for Count 2 on page 32 of the Complaint is amended to provide: "Count 2 – Failure to identify 75 HON components and monitor 75 components."*
- c. *Paragraphs 191 and 192 of the Complaint are amended as follows: Each instance of the number "153" in those paragraphs is changed to "75."*
- d. *The heading for Count 3 on page 33 of the Complaint is amended to provide: "Count 3 – Failures to maintain identification on 12 valves until re-monitored within 3 months of repair and failure to re-monitor 7 valves within first 3 months after repair."*
- e. *Paragraph 196 of the Complaint is amended to provide: "Each of Respondent's failures to maintain identification on 12 valves (#503, #693, #11, #739.3, #21, #88, #249, #79.62, #56.7, #56.92, #295, #200.9) until re-monitored within first 3 months of repair is a violation of 40 C.F.R. § 63.162(f)(2)."*
- f. *Paragraph 197 of the Complaint is amended to provide: "Respondent's failure to re-monitor valves #503, #11, #739.3, #21, #88, #249, and #79.62 within the first 3 months after repair is a violation of 40 C.F.R. § 63.162(f)(3)."*

4. As required by CROP 22.18(b), for the purposes of this Consent Agreement and administrative civil penalty proceeding, and to avoid the expense of protracted litigation, Respondent:

- a. Admits the jurisdictional allegations of the Complaint;
- b. Neither admits nor denies the factual allegations found in Paragraphs 113-179 of the Complaint and Paragraphs 181-207 of the Conclusions of Law, but admits the amendments in Paragraph 3 above of this Consent Agreement that amend Paragraph 163 of the Complaint;
- c. Consents to the payment of the civil penalty specified below in the "Settlement" section of this Consent Agreement, on the terms specified in that section;
- d. Waives any right to contest the Complaint's allegations and any right to appeal the attached Final Order.

Settlement

5. Pursuant to Section 113(d) of the Act, Respondent shall pay a civil penalty of \$171,078. Respondent shall have the option of paying the entire \$171,078, either by corporate, cashiers' or certified check within thirty (30) days from the date of issuance of the attached Final Order (Due Date). Respondent shall: (1) clearly type or write the docket number (CAA-02-2011-1217) on the check to ensure proper payment; (2) make the check payable to the order of "Treasurer, United States of America;" and (3) send the check to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent shall send notice of payment to the following:

Kenneth Eng, Air Compliance Branch Chief
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency – Region 2

CAA-02-2011-1217

290 Broadway – 21st Floor
New York, New York 10007

and

Air Branch Chief
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 2
290 Broadway – 16th Floor
New York, New York 10007

6. If Respondent fails to make full and complete payment of the \$171,078 penalty that is required by this CAFO, this case may be referred by EPA to the United States Department of Justice and/or the United States Department of the Treasury for collection. In such an action, pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5) and 31 U.S.C. § 3717, Respondent shall pay the following amounts:

- a. Interest. If Respondent fails to make payment, or make partial payment, any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 31 U.S.C. § 3717 and 26 U.S.C. § 6621 from the payment Due Date.
- b. Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be paid if any portion of the assessed penalty is more than thirty (30) days past the payment Due Date.
- c. Attorney Fees, Collection Costs, Nonpayment of Penalty. If Respondent fails to pay the amount of an assessed penalty on time, pursuant to 42 U.S.C. § 7413(d)(5), in addition to such assessed penalty and interest and handling assessments, Respondent shall also pay the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such a failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

7. This Consent Agreement is being entered into voluntarily and knowingly by the parties in full settlement of Respondent's alleged violations of the Act set forth in the Complaint and this Consent Agreement.

8. Nothing in this Consent Agreement and attached Final Order shall relieve Respondent of the duty to comply with all applicable provisions of the Clean Air Act and other environmental laws.

9. This Consent Agreement and attached Final Order shall not affect the right of the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

10. This Consent Agreement, attached Final Order, and any provision herein is not intended to be an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit, or proceeding to enforce this CAFO or any if its terms and conditions.

11. Respondent explicitly waives its right to request a hearing and/or contest allegations in this Consent Agreement and explicitly waives its right to appeal the attached Final Order.

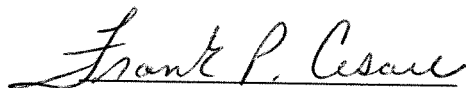
12. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with, or to be served with and to reply to any memorandum or communication addressed to, the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Final Order.

13. Each party to this Consent Agreement shall bear its own costs and attorneys' fees in this action resolved by this Consent Agreement and attached Final Order.

14. The Consent Agreement and attached Final Order shall be binding on Respondent and its successors and assignees.

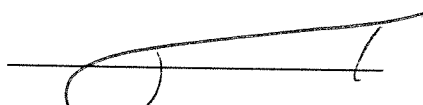
15. Each of the undersigned representative(s) to this Consent Agreement certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Agreement and bind that party to it.

For Respondent:



Frank P. Cesare
Regional Manager
Ferro Corporation

For Complainant:



Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
United States Environmental
Protection Agency, Region 2

Date May 8, 2012

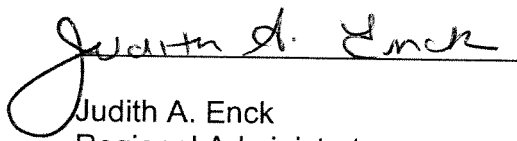
Date MAY 22, 2013

In the Matter of Ferro Corporation
CAA-02-2011-1217

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement, in the matter of Ferro Corporation, CAA-02-2011-1217. The Consent Agreement, entered into by the parties, is hereby approved and issued, as a Final Order, effective immediately.

DATE: 5-29-12


Judith A. Enck
Regional Administrator
United States Environmental
Protection Agency, Region 2

CAA-02-2011-1217

CERTIFICATE OF SERVICE

I certify that the attached Consent Agreement and Final Order (CAFO), dated 05/29/2012 was sent in the following manner to the addressees listed below.

Original and One Copy Delivered by hand to Regional Hearing Clerk's Office:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Copy by Hand to:

Kara Murphy
Assistant Regional Counsel
U.S. Environmental Protection Agency
Air Branch, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Helen S. Ferrara
Regional Judicial Officer
Assistant Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007-1866

and copy by Overnight Mail to:

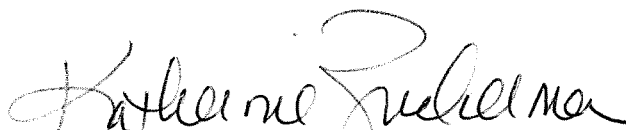
Mr. Frank P. Cesare, Jr.
Regional Manager
Ferro Corporation
Delaware River Facility
170 Route 130 South
Bridgeport, N.J. 08014

Ellen Radow Sadat, Esq
Drinker & Biddle
105 College Road East, Suite 300
P.O. Box 627
Princeton, New Jersey 08542

and copy to:

Blake Edwards
U.S. Environmental Protection Agency
26 West Martin Luther King Drive
Mail Code: NWD
Cincinnati, OH 45268

Dated: May 30, 2012

A handwritten signature in dark ink, appearing to read "Katherine Zuckerman", written over a horizontal line.

Katherine Zuckerman
Air Branch Secretary
U.S. Environmental Protection Agency
Office of Regional Counsel, Region 2